extraordinary limitation occurred in the will of Peter Thellusson, an English merchant of great wealth, and was sustained as being within the limits prescribed by the Rule against Perpetuities. Wms. R. P. (320); Gray, secs. 190, 216, 686.

(4) Testator wills that part of his estate devised in trust shall not be divided "until the youngest child of all my said children shall be 21 years of age; and in the same paragraph directs that "when the youngest child now, and which shall hereafter be born, of all my said chilhren shall have reached, or, if living, would have reached the age of 21 years," then the trustee shall sell the property and divide the proceeds "among such of my children as may *then* be living, and the descendants of those who may have died (they taking a parent's part)." *Held* (1) that the testator refers to his youngest *grandchild;* and (2) that the period of division is not too remote, as the estate must vest during lives in being, and the utmost period of gestation, and 21 years thereafter. *Otterback v. Bohrer*, 87 Va. 548. See Gray, sec. 370.

In applying the Rule against Perpetuities, it should be borne in mind that the question of remoteness depends upon the state of facts at the time of the testator's death, though differing from that existing at the date of the will. See *McArthur v. Scott*, 113 U. S. 340, 382; *Pleasants v. Woodruff*, 81 Va. 37. It follows that a devise which would have been void if the testator had died immediately after making his will, may be valid under the circumstances existing at his death. Thus, in the example given above, "Devise to the first son of A (A being alive at the testator's death), who shall attain the age of 25 years," which is void for remoteness, if A were to die before the testator, leaving a son, the gift to the son would be valid; for though the estate of the son is not to vest until the son reaches 25, yet it must necessarily take effect, if at all, within a life in being at the testator's death, viz., the son's own life. And the devise would also be valid if a son of A had attained the age of 25 before the testator's death, although A survived the testator. See Wms. Real Prop. (17th International ed.), note (1), citing 1 Jarm. on Wills (4th ed.), 254; *Picken v. Matthews*, 10 Ch. D. 264. And see Gray, Rule against Perpetuities, sec. 231.

WARRANTY AGAINST PATENT DEFECTS IN A CHATTEL.—It is said by Blackstone (3 Bl. Com. 165): "A *general* warranty will not extend to guard against defects which are plainly and obviously the objects of one's senses; as if a horse be warranted perfect, and wants either a tail or an ear, unless the buyer in this case be blind." This doctrine is said to rest on the presumption that the parties *did not intend* a general warranty to embrace manifest (and presumably known) defects. Hence it has no application to cases where the seller has resorted to artifice to conceal a defect in its nature patent, or where the buyer has had no opportunity for inspection. See Darl. Pers. Prop. 85; *Hanks v. McKee*, 2 Littell (Ky.) 227, (13 Am. Dec. 265); *Kenner v. Harding*, 85 Ill. 264 (28 Am. Rep. 615). Nor does it apply when, though the purchaser has notice of *some* defect, its *character and extent* are not certain and obvious; and it is said that a general warranty may cover patent defects "in cases of doubt and difficulty, where the purchaser relies on the warranty, and not on his own judgment." And it may also cover the *future consequences* of known defects. *Marshall v. Drawhorn*, 27 Ga. 275, cited in *McCormick v. Kelly*, 28 Minn. 135 (Pattee's Cases on Sales, 354); 2 Sch. Pers. Prop. 341; *Roberts v. Jenkins*, 21 N. H. 116 (53 Am. Dec. 169 and note).

Thus in the old case of *Butterfield v. Burroughs*, 1 Salkeld, 211, the plaintiff sued on a warranty that a horse was "sound, wind and limb," and averred as a breach that the horse "had but one eye." After verdict for the plaintiff, there was a motion in arrest of judgment on the ground that "the want of an eye is a visible thing, whereas the warranty extends only to *secret* infirmities." But the court said that, after verdict, it would be *intended* (*i. e.*, presumed) that the defect was secret, interpreting the lack of an eye to refer to want of sight in one eye, a defect whose discernment, as Blackstone says (3 Bl. Com. 165) is frequently a matter of skill. And with regard to the *consequences* of a patent defect, see *Brown v. Bigelow*, 10 Allen (Mass.) 242, where the purchaser knew a week before the sale that the horse was lame, but exacted of the seller a warranty of soundness; and this was held available to the buyer when the horse proved permanently lame. Here the court considered that the warranty was against *permanent* lameness, and that such lameness was not patent. See Benjamin on Sales, sec. 616, note (c).

So far we have considered the applicability of a warranty, when the defect is patent and known, as a matter of *intention*, with a presumption in favor of the seller, when he uses general words such as "sound," "perfect," etc., that he means that the horse, *e. g.*, is sound, etc., *excepting patent defects*. But suppose that the seller *distinctly and specially* warrants against the existence of a defect which does exist, as is manifest and well known to both the seller and buyer. Is such a warranty available in law? On this point there is a conflict of authority. The old doctrine certainly was that a seller *could not* warrant against the existence of a known defect, on the idea that to constitute a breach of warranty the buyer must be *misled* by the seller's deceit, which could not be as to a defect known to the buyer. And see the recent case of *McCormick v. Kelly*, 28 Minn. 135, where it is said that a warranty must be "a representation of something as a fact, upon which the purchaser relies, and by which he is induced, to some extent, to make the purchase, or is influenced with respect to the price or consideration. In the nature of things one cannot rely upon the truth of that which he knows to be untrue; and to a purchaser fully knowing the facts in respect to the property, misrepresentation cannot have been an inducement or consideration to the making of the purchase, and hence *could have been no part of the contract.*"

On the other hand Schouler says (2 Sch. Pers. Prop., sec 341): "Express warranty, however, is essentially a matter of bargain, of mutual understanding, of common consent; and that the seller may insure the buyer against the most obvious and patent defects in the subject-matter of sale, if he choose, is now unquestionably law." Thus in *Pinney v. Andrus*, 41 Vt. 631, where the seller especially warranted sheep against the foot-rot, it was held that on proof of breach of the warranty, the buyer was entitled to recover, whether the disease was obvious and known to the buyer or not. And see Benj. on Sales, sec. 616, note (f). It is probable, however, that in most cases upholding a warranty against known defects, the real ground of the decision was that the warranty was not against the *existence* of the defect, but against its *future consequences;* and these must always be more or less uncertain. See *Margetson v. Wright*, 7 Bing. 603; s. c. 8 Bing. 454.

REMEDIES OF SELLER OF GOODS FOR THE BUYER'S DEFAULT.—Here there are three cases to be considered.

1. Where the sale is executed and *title* has passed to the buyer, and *possession*